

BEFORE THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

AGB ENTERPRISE, INC,
4118 McCullough, Suite 8
San Antonio, Texas 78212,

Petitioner,

- v. -

DOUGLAS SHULMAN, Commissioner
of Internal Revenue Service,
1111 Constitution Avenue, NW
Washington DC 20224

Respondents.)

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CLERK, US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
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Civil Action No. _____

PETITION TO QUASH INTERNAL REVENUE SERVICE SUMMONS

I. Introduction

1. *Comes now*, the Petitioner, AGB Enterprise, Inc. (AGB), through its undersigned counsel, to respectfully petition the Court for relief by granting an order to quash the third-party Summons (Summons) issued by Internal Revenue Service (IRS) to AGB's through its Registered Agent, Ms. Ana Garcia de Beck.

II. Jurisdiction

2. Paragraph 1 is hereby incorporated directly, indirectly and/or by implication where necessary in the reading and interpretations of the following allegation(s):

3. This Court is vested with *subject matter* and *in personam* jurisdiction pursuant to *Title 26 USC § 7609(h)*.

III. Parties

4. Paragraphs 1 through 3 are hereby incorporated directly, indirectly and/or by implication where necessary in the reading and interpretations of the following allegation(s):

5. Petitioner AGB is a for profit, privately held corporation, chartered to do business in the State of Texas since on or about September 2009. AGB's main office is located at 4118 McCullough, Suite 8, San Antonio, Texas 78212. AGB's Registered Agent is Ms. Ana N. Garcia de Beck and may be served with pleadings at either 4118 McCullough, Suite 8, San Antonio, Texas 78212 or through her and AGB's undersigned counsel's local office at 1911 Guadalupe Street, San Antonio, Texas 78207; telephone number (210) 231-0112; facsimile number (210) 212-7215.

6. The Respondent is the Honorable Douglas Shulman, the Commissioner of the Internal Revenue Service and may be served with pleadings at 1111 Constitution Avenue, NW, Washington DC 20224, or through his counsel, the Attorney General of the US, the Honorable Eric H. Holder, Jr., located at the US Department of Justice, 950 Pennsylvania Ave, NW, Room No. 4400, Washington, DC 20530, and locally through the Office of the Honorable John E. Murphy, US Attorney, located at the US Attorney's Office for the Western District of Texas, at 601 NW Loop 410, Suite 600, San Antonio, Texas 78216.

IV. Facts

7. Paragraphs 1 through 6 are hereby incorporated directly, indirectly and/or by implication where necessary in the reading and interpretation of the following allegation(s):

8. AGB is a third entity as defined within *Title 26 USC § 7609*. AGB has only been in business and incorporated for approximately fourteen (14) months.

9. On October 22, 2010, Revenue Officer (RO) James Ashton issued a Summons to AGB, through "Ana Garcia Beck, as President, at 4118 McCullough, Suite 17, San Antonio, Texas 78212". (See copy of the Summons at Petitioner's Exhibit 1, attached hereto).

10. RO Ashton did not issue the Summons at AGB's main office at 4118 McCullough, Suite 8, San Antonio, Texas 78212. Instead, RO Ashton issued the Summons at 4118 McCullough, Suite 17, San Antonio, Texas 78212, by leaving it with an employee of AGB.

11. RO Ashton also left a Summons at the Registered Agent's abode by taping the Summons to the front wall of Ms. de Beck's front door.

12. From October 22 through 25, 2010, Ms. de Beck was in Mexico visiting her family. She did not receive the Summons until October 25, 2010, after 5:00 PM, CST, upon her return from Mexico.

13. The earliest that AGB has to petition the Court to quash the Summons is Thursday, November 11, 2010. [See Title 26 USC § 7609(b)(2)(A)]. However, since AGB's Registered Agent did not receive the Summons until October 25, 2010, the latest AGB has to petition the Court to quash the Summons is November 14, 2010; due to the fact that Ms. de Beck was in Mexico when RO Ashton served the Summons.

14. The Summons specifically cites: "In the matter of AGB Enterprises Inc.[;] Internal Revenue Service (*Identify Division*) Small Business/Self Employed[;] Industry/Area (*Identify by number or name*) Small Business/Self Employed – Area[;] Periods: Quarterly period ending June 30, 2010[;] Issued To: Ana Garcia Beck, as President[;] At 4118 McCullough, Ste. 17, San Antonio, TX 78212"

15. The Summons requires documents from the "Periods: Quarterly period ending June 30, 2010" while in the body of the narrative the period was cited as "From September 1, 2009 To the date of full compliance with this summons".

16. Petitioner AGB, through its Registered Agent, Ms. Ann Garcia de Beck, is not aware of any audit for which AGB has been found liable for any Federal Taxes. Nor has Ms. de Beck been served with any notice of an audit being conducted by the Small Business/Self Employed Examination Unit of the IRS.

17. Before October 22, 2010, RO Ashton had not made any personal attempt to communicate with either AGB or its Registered Agent concerning any of AGB's payroll or Federal Income Taxes.

18. AGB's quarterly payroll tax are up to date and AGB does not own any Federal Income Taxes for the current or past years.

19. RO Ashton's interest lies in obtaining collection information concerning Dr. Robert L. Beck, DMD, MD, and is using the Summons to bring AGB's Registered Agent, Ms. de Beck in for questioning concerning Dr. Beck.

20. RO Ashton is well aware that Dr. Beck and Ms. de Beck file separate Federal Income Tax Returns and that AGB is a completely separate third party entity from Dr. Beck or Ms. de Beck; and, that Dr. Beck exercises no dominion and control over AGB or any of its assets or liabilities.

V. Argument

21. Paragraphs 1 through 20 are hereby incorporated directly, indirectly and/or by implication where necessary in the reading and interpretation of the following allegation(s):

22. The facts establish that AGB is a third party entity pursuant to *Title 26 USC § 7609*. The undersigned is the attorney who is representing AGB as well as its Registered Agent, Ms. de Beck. Presently, AGB has no dispute with the IRS. The IRS has made no allegation that AGB owes any payroll or Federal Income Taxes for fiscal years 2009 or 2010. AGB is current on it payroll taxes as well as its Federal Income Taxes. The information sought by IRS consist of:

All documents and records you possess or control regarding assets, liabilities, or accounts held in the name of AGB Enterprises Inc. and/or any trade-name or dba used in the normal course of business in which it wholly or partially owns, or in which AGB Enterprises Inc. has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks, saving account passbooks, records or certificates of deposit for the period:

From September 1, 2009 to the date of full compliance with the summons

Also include all current vehicle registration certificates, contracts or agreements with any company providing credit and/or processing credit cards; any and all contracts regarding business involvement with any company providing outside financing for medical/dental care, contracts regarding real property, documents regarding business property and/or personal property used in your business, stocks and bonds, accounts, notes and judgments receivable, and all life or health insurance policies.

Lorenzo W. Tijerina, Attorney for
Petitioner, AGB Enterprises, Inc.
Local Office at:
1911 Guadalupe Street
San Antonio, Texas 78207
Telephone No. (210) 231-0112
Facsimile No. (212) 212-7215
tasesq@msn.com

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records. (See copy of attached Summons).

Considering the fact that AGB is not delinquent in its Federal Payroll Taxes or its Federal Income Taxes, the requests for documents is objectionable due to the fact that such a request subjects AGB and its Registered Agent to undue burden, unnecessary expense and is made for the sole purpose of annoying and harassing AGB and its Registered Agent. The Summons was issued for the sole purpose of conducting a "fishing expedition" in reference to Ms. de Beck's asset which is not part of the marital estate of Dr. Beck and Ms. De Beck. The requests for documents are also objectionable in that they are unlimited in scope, vague and overly broad. The IRS has not established any legal reason for serving a Summons on AGB. As previously cited, AGB is not the subject of an audit. The IRS has not established that AGB is delinquent in any of its mandated Federal Taxes; and, it appears from the established facts that RO Ashton has abused his authority while acting under color of law. The documents and/or assets at issue are proprietary assets of AGB alone and could be considered protected information. The information sought within the Summons appears to fall within the ambit of the spousal privilege pursuant to *Rule 504* of the *Tex.R.Evid.*

23. This proceeding is instituted pursuant to *Title 26 USC § 7609(b)* to quash the Summons issued upon AGB.

WHEREFORE, premises considered, AGB respectfully requests Summons from the IRS be quashed and that an Order of Protection be issued to prevent any further summons, subpoenas or other orders to appear and provide documents and give testimony. Further, AGB and its Registered Agent respectfully requests any and other relief to which they may show to be justly entitled.

Respectfully submitted,

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